

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**Robert A. Nicholson, d/b/a Hidden
Valley Mobile Home Park Wapello
County**
Wapello County, Iowa

ADMINISTRATIVE ORDER

NO. 2008-AQ-~~31~~
NO. 2008-SW-~~25~~

TO: Robert A. Nicholson, d/b/a Hidden Valley Mobile Home Park
177 Riverview Acres Road
Hudson, Wisconsin 54106

I. SUMMARY

This administrative order is entered into for the purpose of resolving solid waste and air quality violations which have occurred at property owned by Robert A. Nicholson, d/b/a Hidden Valley Mobile Home Park, and located at 16440 West Highway 34, Ottumwa, Wapello County, Iowa.

Questions regarding this administrative order should be directed to:

Relating to technical requirements:

Brent Earley, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order

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necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On September 13, 2007, Brent Earley of DNR Field Office No. 6 investigated a complaint regarding the illegal demanufacturing of appliances at the Hidden Valley Mobile Home Park located at 16440 West Highway 34, Ottumwa, Wapello County, Iowa (the site).¹ The site is owned by James D. Olchefski and Robert A. Nicholson, both of Hudson, Wisconsin. The neighboring site, 16442 West Highway 34, Ottumwa, Wapello County, Iowa, is owned by Mrs. Edna Richman. Mr. Earley's investigation occurred at both of these sites.

2. While at the sites, Mr. Earley observed and photographed many piles of materials that had been illegally open dumped and illegally open burned. The piles contained ash and solid waste. Some of the piles were recently dumped and burned, and some appeared to be older, as they were grown over with vegetation.

3. While at the sites, Mr. Earley spoke with whom he believed to be one of the site managers, Mrs. Edna Richman. Mrs. Richman indicated that she and her husband, Ray, have been site managers since 2006, but Mr. Richman is now deceased. Mrs. Richman stated that all appliances from abandoned mobile homes are taken to the area recycling facility unless they are functional. If functional, Ron Roland of Oskaloosa takes them as payment for assistance in dismantling the mobile homes. She stated further that any non-salvageable parts of a mobile home are then piled out back and burned. The ash piles are taken periodically to the farm where her son lives near Russell, Iowa, and buried. Mrs. Richman stated that this disposal method has been used for years.

4. Illegal open dumping and illegal open burning have occurred at these sites in the past, and DNR has notified owners Mr. James Olchefski and Mr. Robert Nicholson of the prohibitions against illegal open burning and illegal open dumping on numerous occasions in the past. A May 9, 2005, Notice of Violation letter was sent by DNR Field Office No. 6 to Robert A. Nicholson and James D. Olchefski, citing illegal open dumping at the site. On April 25, 2005, DNR personnel investigated an April 18, 2005, complaint from the Wapello County Sanitarian that illegal open dumping was occurring at the site. On April 25, 2005, DNR personnel observed trash and other household materials scattered along and in the creek that runs along the east side of the mobile home park. The May 9, 2005, Notice of Violation letter cited the violations and

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explained the prohibitions against illegal open dumping and illegal open burning. The May 9, 2005, Notice of Violation letter also instructed both Mr. Olchefski and Mr. Nicholson to refrain from the disposal of solid waste by burning or burying it. Further, the Notice of Violation letter required that the site be cleaned up by June 27, 2005. Copies of DNR's open dumping rules were enclosed with the letter.

5. On August 11, 2005, Robert A. Nicholson was sent a second letter, discussing the lack of cleanup and allowing an extension request to accomplish the cleanup, due to a change in the management at the mobile home park. An identical letter also was sent on August 11, 2005, to James D. Olchefski. The second letter required that cleanup occur by no later than December 15, 2005. The August 11, 2005, letter also reiterated the requirement to refrain from the disposal of solid waste by burning or burying it.

6. On December 29, 2005, DNR personnel visited the site and observed that no progress had been made toward cleanup of the site and that additional solid waste has been illegally dumped at the site. While at the site, DNR personnel also observed violations of the prohibition against illegal open burning. A January 9, 2006, Notice of Violation letter addressed to Robert A. Nicholson and a January 9, 2006, Notice of Violation letter addressed to James D. Olchefski required that cleanup of the site occur by no later than February 1, 2006, and that disposal receipts be retained for review by DNR. Once again, copies of DNR rules were included with the letters.

7. On February 8, 2006, DNR personnel visited the site and observed that some progress had been made towards cleanup. However, additional material had been open dumped at the site. While on the site, DNR personnel spoke with Mr. and Mrs. Richman, who indicated they were the new managers of the mobile home park. Mr. and Mrs. Richman explained that they were making progress toward cleanup of the site, but that they needed more time. Following DNR's visit to the site, a February 16, 2006, Notice of Violation letter was sent to both Robert A. Nicholson and James D. Olchefski. The letters stated that since the new managers were working toward cleanup of the site, DNR would allow until April 21, 2006, to complete cleanup. The letters also reiterated the requirement to refrain from the disposal of solid waste by burning or burying it. A copy of the letter was sent to Mr. and Mrs. Richman.

8. On May 22, 2006, DNR personnel visited the site and observed that cleanup of the stream corridor on the east side of the mobile home park was substantially completed, although some litter remained. Identical May 25, 2006, letters were sent to Robert A. Nicholson and James D. Olchefski, documenting the condition of the site. The letters also reiterated the requirement to refrain from the disposal of solid waste by burning or burying it. A copy of the letter was sent to Mr. and Mrs. Richman.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade waste is specifically prohibited. The above facts demonstrate violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapter 100.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered that Robert A. Nicholson, d/b/a Hidden Valley Mobile Home Park do the following:

1. Pay a penalty of \$3,000.00 (three thousand dollars) within 60 days of the date this order is signed by the Director, subject to the appeal rights in Section VII of this order; and

2. Within 45 (forty-five) days of the date this order is signed by the Director, complete cleanup of the site and deliver salvage, recycle and landfill receipts to DNR Field Office No. 6.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$3,000.00 is assessed. The penalty must be paid within 60 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties

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of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Robert A. Nicholson, d/b/a Hidden Valley Mobile Home Park, has achieved an economic benefit from open burning and improper waste disposal. He has saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the solid wastes from the site. Based on these considerations, \$1,250.00 is assessed for this factor.

Gravity of the Violation – Compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Additionally, open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. There was the likelihood of actual harm to the environment, due to the proximity of surface water at the site from a running stream and the presence of both illegally dumped solid waste and ash from illegal open burning. Based on the above considerations, \$1,000.00 is assessed for this factor.

Culpability – Robert A. Nicholson, d/b/a Hidden Valley Mobile Home Park, has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Therefore, \$750.00 is assessed for this factor.

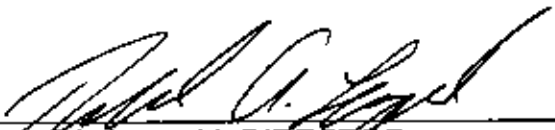
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VII. APPEAL RIGHTS

Pursuant to Iowa Code sections 455B.138 and 455B.308 and 567 IAC 7.5(1), a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative order.


Richard A. Leopold, DIRECTOR
Iowa Department of Natural Resources

Dated this 17 day of
Sept., 2008.

¹ The legal description of the site is as follows: A part of the Southwest ¼ of the Northeast ¼ of Section 28, Township 72 North, Range 14 West of the 5th P.M., Wapello County, Iowa which lies south of U.S. Highway No. 34 and more particularly described as follows:

Commencing at the SW corner of said SW ¼ of the NE ¼; thence S 88 degrees 59 minutes E 396.66 feet along the south line thereof to the point of beginning; thence N 0 degrees 40 minutes 55 seconds W 774.19 feet to the southerly right-of-way line of U.S. Highway No. 34; thence N 74 degrees 36 minutes 50 seconds E 582.56 feet along said right-of-way line to a rail; thence N 77 degrees 45 minutes 00 seconds E 87.0 feet; thence S 4 degrees 38 minutes 05 seconds E 145.85 feet; thence N 86 degrees 12 minutes 15 seconds E 105.70 feet; thence N 3 degrees 47 minutes 45 seconds W 32.0 feet; thence N 79 degrees 43 minutes 05 seconds E 40.0 feet; thence S 4 degrees 11 minutes 10 seconds E 36.0 feet; thence North 83 degrees 55 minutes 00 seconds E 15.0 feet; thence N 77 degrees 41 minutes 05 seconds E 22.0 feet; thence N 71 degrees 06 minutes 05 seconds E 22.3 feet; thence N 58 degrees 58 minutes 55 seconds E 26.1 feet; thence N 35 degrees 51 minutes 10 seconds E 21.0 feet; thence N 14 degrees 12 minutes 15 seconds E 19.6 feet; thence N 5 degrees 34 minutes 00 seconds W 21.7 feet; thence N 11 degrees 20 minutes 25 seconds W 103.0 feet to said right-of-way; thence N 77 degrees 45 minutes 00 seconds E 74.0 feet along said right-of-way line to a Rail; thence S 0 degrees 48 minutes 50 seconds W 1029.70 feet to the SE corner of said SW ¼ of the NE ¼; thence N 88 degrees 59 minutes 05 seconds W 926.84 feet along the south line thereof to the point of beginning and subject to easements for ingress and egress in the NW and NE corners thereof. Note: The centerline of said U.S. Highway No. 34 is taken to bear S 74 degrees 52 minutes W for the purposes of this description.